

**WURZWEILER SCHOOL OF SOCIAL WORK
YESHIVA UNIVERSITY
Ph.D. PROGRAM IN SOCIAL WELFARE**

**ADVANCED TOPICS IN LAW AND SOCIAL WORK
SWK 8109
FALL 2018**

I. COURSE DESCRIPTION

Social work practice is guided by developments in the arenas of law, governmental policy, and ethics. Whether framed by court decisions, duly passed legislation, or government agency regulations, laws shape the activities of social work organizations and practitioners. The focus of this course is to develop an appreciation and understanding for the role of court decisions, particularly decisions of the U.S. Supreme Court, on social policy, social work, our clients and practice, and the everyday lives of Americans.

The focus of this course is the application of legal/policy analytic and research skills to social work practice. This course builds upon Foundations of Law and Social Work, which provided students with an understanding of how the U.S. legal system works and how caselaw evolves through precedence – an incremental process incorporating standards set by earlier cases. To ensure both focus and breadth, the instructor will select key legal decisions, primarily important and landmark recent decisions of the U.S. Supreme Court, for analysis by students. Students will be asked to identify key issues presented by the cases, legal concepts, the underlying values at stake, the affected communities, and the implications for social policy and social work practice. Students will be able to apply these analytic skills to independent research on a selected social policy issue – for example, in health care, mental health/behavioral health care, education, child welfare, services for older adults, disability concerns, immigration issues, or civil rights – related to practice, policy development, and advanced research. In addition, the course will serve as a general introduction to the many substantive issues and dilemmas currently confronting U.S. policymakers, courts, society, and the social work profession.

II. EDUCATIONAL OBJECTIVES

A. Knowledge Objectives: General Applicability

At the end of the semester, students will have acquired an advanced understanding of:

- The principles of legal analysis, including issue identification, legal concepts and the critical role of precedence; the underlying values at stake; and the affected communities;
- The implications of court decisions on policymakers and future courts;
- The implications of court decisions on social policy, social work, our clients and practices, and society in general;
- Key constitutional rights, including due process, equal protection, and privacy; and
- Understanding how divergent legal, policy, political, and societal perspectives are reflected in majority and dissenting opinions.

B. Skill Objectives

At the end of the semester, students will be able to:

- Identify legal case materials for analyzing social problems;
- Analyze legal case materials, incorporating legal concepts and societal values, for analyzing social problems at an advanced level;
- Weigh and balance divergent legal, policy, political, and societal perspectives when analyzing legal opinions; and
- Apply legal principles and analytic skills to social problems.

III. COURSE REQUIREMENTS

A. Texts and Readings

Required Materials

Primary case materials will be drawn from recent U.S. Supreme Court decisions, and media reports, that are easily obtained from the Internet.

Stein, T.J. (2004). *The role of law in social work practice and administration*. New York: Columbia University Press. Chapters 1-4. [Textbook used last semester in Foundations of Social Work]
ISBN-10: 0231126484 List: \$90.00

Recommended Texts

Slater, L.K. & Finck, K.R. (2012). *Social Work Practice and the Law*. New York: Springer Publishing Company.
ISBN-10: 082611766X List: \$56.23

Sloan, A.E. (2012). *Basic Legal Research: Tools and strategies, (5th ed.)*. New York: Wolters Kluwer Law & Business.
ISBN-10: 1454808470 List: \$85.27

B. Course Format

It is expected that all reading assignments listed as “required” in the course outline will be read prior to class postings and activities on the Discussion Forum. Students are encouraged to draw upon their experiences and the literature to think analytically about current issues, problems and alternative solutions regarding legal analysis, social work policy, and practice. Each student is expected to actively participate in class discussions, contributing knowledge, experience and ideas.

Participation in Discussion Forums

Following class modules, each student is asked to submit responses to the on-line class Discussion Forum. Responses are requested around a problem/issue topic for each module. Students are

required to submit a thoughtful, concise response – the equivalent to one (1) double-spaced page in length – that integrates concepts from the readings, social work values, and individual perspectives on the issue. This is an opportunity for students to think through the issues addressed by the module and to dialogue with their colleagues and professor about the material. In addition to the required primary response to the issue at hand, students should also submit two (2) brief comments to chosen primary responses of their student colleagues. Although brief, comments should thoughtfully and briefly elaborate upon the discussion of their colleagues. It is insufficient to simply state that you agree or disagree with your colleagues; you need to explain your perspective. The professor will respond to and summarize student perspectives following each module due date.

Responses are to be submitted to the on-line Discussion Forum no later than the due date, at which time the opportunity to submit responses for the module will close. Student responses will be evaluated based on their overall quality and thoughtfulness at the end of the course (as exceptional, adequate, or failing to address course material). The professor will also “take attendance” for each Discussion Forum; “absences” will result in a lower final grade.

Leading Module Discussions

Students will be paired to facilitate the discussion of their selected class topic in a thoughtful and interesting manner. Student leaders will collaborate in developing class activities for that module. These activities include developing the topic for discussion forum, providing extra materials for the module, such as videos or websites accessed from the Internet, and formulating a thoughtful summary report back to the class. These activities will be developed prior to the week of the particular module, in collaboration with the professor.

C. Final Assignment: Policy and Legal Analyses of Social Issues

Due Date: Class 12

Students are to select a social issue or problem related to their dissertation topic or area. Alternatively, if students have not selected a topical area for their dissertation, they may identify an issue or problem in health or mental health practice or policy – or a landmark or significant federal statute with important implications for social work practice or policy – for ethical and legal analysis. While class discussion or materials may cover the issue or problem selected, the paper should go into much greater depth on a particular aspect of this issue, and analyze new (unassigned) professional literature and legal cases.

The paper should be developed as follows:

1. **Problem / Issue Identification.** Explain the issue, question, or statute to be examined by the paper. What is the problem? How did it first develop? What are the legal questions raised by this issue? What are the policy and/or ethical questions raised by this issue? If relevant, explain the scientific or clinical background implicated by this issue. Whom does this issue impact? Students should incorporate at least 3 seminal articles from peer-reviewed law, policy, and/or ethics literature to support problem analysis.
2. **Policy Analysis.** Using the social/public policy literature about your topic, analyze the policy issues you raised in section 1. How have policymakers, such as government agencies or state or

federal legislators addressed these issues (or not). How have NASW or other major policy organizations addressed these issues, and explain their perspectives. Incorporate at least 5-7 leading articles from peer-reviewed literature.

3. Legal Analysis. Analyze and synthesize 3 key cases in which your problem is at issue. Analysis of legal cases should incorporate the fact pattern, the legal issue presented for resolution, legal principles used to resolve the dispute, the case holding (decision), and implications for future cases. Preference should be given to U.S. or State Supreme Court decisions, or leading appellate court decisions. Also, if applicable, integrate the reasoning of dissenting opinions. Note: The actual court decisions must be read and cited in the paper, not analyses of those decisions by other authors in secondary sources.

4. Resolution. Explain your resolution of the policy/legal issue following the development of your policy and legal sections. Does this resolution comport with social work values, and if applicable, the NASW Code of Ethics? Are there policy, legal, or ethical issues left unresolved? Why are you satisfied, or not satisfied, with the resolution?

Length: 18 pages, not including references.

Adherence to APA style of sectioning, referencing and margins is required. It is expected that students will evidence communication skills consistent with doctoral education standards. It is expected that written work is carefully proofread and edited before submission. It is expected that assignments will be handed in on the due date. Grades may be reduced for late papers.

D. Grading

The University grading system will be applied. The grade will be based upon the extent to which the student meets the course objectives, as demonstrated in the form, content, and promptness of written assignments, as well as class attendance and meaningful class participation.

Criteria for final grades are:

- | | |
|---|-----|
| 1. Final Paper | 70% |
| 2. Meaningful and Active Participation & "Attendance" | 30% |

The policy of WSSW is that absences beyond two in a semester may be cause for failure.

E. Evaluation

Students are provided opportunity to evaluate doctoral courses. An evaluation form pertaining to the course and instructor will be conducted on-line. Evaluation is ongoing and students are encouraged to provide feedback about their learning needs throughout the semester.

COURSE SCHEDULE

Week 1 INTRODUCTION & OVERVIEW OF THE COURSE; ROLE OF THE U.S. SUPREME COURT IN PUBLIC POLICY

- Overview of course
- Understanding the legal process
- Reading case opinions – majority, concurring, and dissenting opinions
- Liberal vs. Conservative, Left vs. Right: What does it mean?
- The recent Supreme Court term
- Relevance for social work practice

Required readings:

Stein, T.J., Chapter 1, "Introduction," and Chapter 2, "Sources of Law," pages 3-42; Chapter 4, "Legal Research," pages 86-88. [Please skim, as review from last semester]

Liptak, A., & Parlapiano, A. (2018, June 28). Conservatives in Charge, the Supreme Court Moved Right. *The New York Times*.

Liptak, A. (2018, June 30). How conservatives weaponized the first amendment. *The New York Times*.

Barnes, R. (2018, July 9). A more conservative Supreme Court could step, not lurch, to the right. *The Washington Post*.

Stiles, T.J. (2018, July 26). The constitutional amendment that reinvented freedom: The 14th Amendment, the one that empowered the Bill of Rights, turns 150 on Saturday. *The New York Times*.

Jordan, M. (2018, July 28). A little girl left behind by 'zero tolerance' rule. *The New York Times*.

Week 2 QUICK REVIEW OF LEGAL RESEARCH BASICS; SEPARATION OF CHURCH AND STATE

- Basic skills for conducting legal research
- Researching caselaw
- Researching law review journals
- Using electronic databases
- Introduction to legal citations

- Understanding separation of church and state doctrine
- Recent application of separation of church and state
- Use of publicly funded vouchers to pay for private schools

Required readings:

Trinity Lutheran Church of Columbia, Inc. v. Comer, Director, Missouri Department of Natural Resources, 582 U.S. ____ (2017).

- Majority opinion, Chief Justice Roberts
- Dissenting opinion, Justice Sotomayor

Stein, Chapter 4, "Legal Research," pages 74-95. [Please skim, as review from last semester]

Weeks 3-4 EQUAL PROTECTION: MARRIAGE RIGHTS OF GAYS AND LESBIANS

- Due process rights to marriage
- Equal protection
- Interplay of U.S. constitution and federal legislation
- Evolution of what is required under the U.S. constitution: a fixed vs. breathing constitution
- First amendment protections of religion and expression
- When rights conflict: Equal protection vs. religious liberties; civil rights vs. religious liberties; civil rights vs. freedom of expression

Required readings:

Week 3

Stein, Chapter 3, pages 43-57

Obergefell v. Hodges, 576 U.S. ____ (2015)

- Majority opinion, Justice Kennedy
- Dissenting opinion, Justice Scalia

Contrera, J. (2018, June 27). Anthony Kennedy and the four Supreme Court rulings that changed gay life in America. *The Washington Post*.

Week 4

Masterpiece Cakeshop, LTD v. Colorado Civil Rights Commission, 584 U.S. ____ (2018)

- Majority opinion, Justice Kennedy
- Dissenting opinion, Justice Ginsburg

Gerstmann, E., & Rauch, J. (2018, June 6). In Masterpiece, Kennedy solidifies his LGBT legacy. *The New York Times*.

Weeks 5-6 ACCESS TO HEALTH CARE: REPRODUCTIVE RIGHTS – CONTRACEPTIVE SERVICES AND ABORTION; CORPORATE RIGHTS

- Access to health care
- Evolving reproductive rights
- Contraceptives as necessary health care

- Religious liberties – Parameters of corporate rights – vs. individual rights
- Re-defining undue burdens on the privacy right to abortion
- Freedom of speech vs. privacy right to abortion

Required readings:

Week 5

Whole Woman’s Health v. Hellerstedt, 579 U.S. ____ (2016)

- Majority opinion, Justice Breyer
- Dissenting opinion, Justice Thomas

National Institute of Family and Life Advocates, DBA NIFLA v. Becerra, Attorney General of California, 585 U.S. ____ (2018).

- Majority opinion, Justice Thomas
- Dissenting opinion, Justice Breyer

Week 6

Burwell, Secretary of Health and Human Services, et al. v. Hobby Lobby Stores, Inc., et al., 573 U.S. ____ (2014)

- Majority opinion, Justice Alito
- Dissenting opinion, Justice Ginsburg

Week 7 ACCESS TO HEALTH CARE: AFFORDABLE CARE ACT

- Access to health care
- Implementation of the Affordable Care Act
- Status of the Affordable Care Act repeal efforts

King, et al. v. Burwell, Secretary of Health and Human Services, et al., 576 U.S. ____ (2015)

- Majority opinion, Chief Justice Roberts

Flegenheimer, M., Martin, J., & Steinhauer, J. (2017, July 28). Behind legislative collapse: An angry vow fizzles for lack of a viable plan. *The New York Times*

Student research TBA: Impact of King v. Burwell on Implementation of the Affordable Care Act; Status of ACA repeal efforts.

Weeks 8, 9, 10 RIGHTS OF IMMIGRANTS

- Parameters of restrictions on undocumented persons
- Current debate on immigration reform
- President Trump’s travel bans
- President Trump’s deportation and detention policies
- Policy to separate immigrant families
- Human faces on immigration policy

Required readings:

Week 8

Kandel, W.A. (2017, January 18). Unaccompanied Alien Children: An Overview (Washington, DC: Congressional Research Service). Downloaded from: <https://fas.org/sgp/crs/homsec/R43599.pdf>

Jenny Lisette Flores v. Janet Reno, Attorney General of the United States, downloaded from: https://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf

Vargas, J.A. (2011, June 26). Outlaw: My life in America as an undocumented immigrant. *The New York Times*.

Vargas, J.A. (2016, November 19). Undocumented in Trump's America. *The New York Times*.

Week 9

Ms. L. v. U.S. Immigration and Customs Enforcement ("ICE"), downloaded from: <https://www.documentcloud.org/documents/4497680-Ms-L-v-ICE-Order.html>

Barrett, D., DeBonis, M, Miroff, N., & Stanley-Becker, I. (2018, June 27). Congress, courts stymie Trump border crackdown, *The Washington Post*.

Associated Press (2018, July 27). Immigrant families remain apart with no end in sight. *The New York Times*.

Barry, D., Jordan, M., Correal, A., & Fernandez, M. (2018, July 14). Cleaning toilets, following rules: A migrant child's days in detention: A portrait of life in the shelters for the children detained after crossing the U.S.-Mexico border. *The New York Times*.

Week 10

Trump, President of the United States v. Hawaii, 585 U.S. ____ (2018)
Majority opinion, Chief Justice Roberts
Dissenting opinion, Justice Sotomayor

Student research TBA: Status of President Trump's detention and deportation policy.

Week 11 DEATH PENALTY: IS THE USE OF LETHAL INJECTION CRUEL AND UNUSUAL PUNISHMENT

- Impact of death penalty for capital crimes
- Morality of life in prison vs. execution
- What is cruel and unusual punishment
- Does the death penalty have a place in democratic societies
- Future of the death penalty

Required readings:

Glossip et al. v. Gross et al., 576 U.S. ____ (2015)

- Majority opinion, Justice Alito
- Dissenting opinion, Justice Breyer

Liptak, A. (2017, July 31). On Justice Ginsburg's summer docket: Blunt talk on big cases. *The New York Times*. [Scroll down for perspective on death penalty.]

Week 12 AFFIRMATIVE ACTION IN HIGHER EDUCATION

- Facilitating integration and "leveling the playing field"
- Equal protection: Reverse discrimination of majorities
- Promoting diversity in higher education
- Parameters of affirmative action in higher education
- Use of constitutional amendments

Required readings:

Fisher v. University of Texas at Austin, 579 U.S. ____ (2016)

- Majority opinion, Justice Kennedy
- Dissenting opinion, Justice Thomas

Hartocollis, A. (2018, April 4). Asian-Americans suing Harvard say admissions files show discrimination. *The New York Times*.

Week 13 SEARCH AND SEIZURE: PRIVACY OF CELL PHONE RECORDS

- Premissible searches and seizures
- Uniqueness of cell phones in our society
- Scope of privacy interests at stake
- Impact on law enforcement

Required readings:

Carpenter v. United States, 585 U.S. (2018)

Majority opinion, Chief Justice Roberts

Week 14 OPEN

Topic open based on current trends and student interest.